



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 236

THURSDAY, FEBRUARY 12, 2009

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to Internet protocol television.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔ Section 1. KRS 136.602 is amended to read as follows:

2 As used in KRS 136.600 to 136.660:

- 3 (1) "Cable service" means the provision of video, audio, or other programming service
4 to purchasers, and the purchaser interaction, if any, required for the selection or use
5 of the video or other programming service, regardless of whether the programming
6 is transmitted over facilities owned or operated by the provider or by one (1) or
7 more other communications service providers. Included in this definition are basic,
8 extended, and premium service, pay-per-view service, digital or other music
9 services, and other similar services;
- 10 (2) "Communications service" means the provision, transmission, conveyance, or
11 routing, for consideration, of voice, data, video, or any other information signals of
12 the purchaser's choosing to a point or between or among points specified by the
13 purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium
14 or method now in existence or later devised.
- 15 (a) "Communications service" includes but is not limited to:
 - 16 1. Local and long-distance telephone services;
 - 17 2. Telegraph and teletypewriter services;
 - 18 3. Prepaid calling services, and postpaid calling services;
 - 19 4. Private communications services involving a direct channel specifically
20 dedicated to a customer's use between specific points;
 - 21 5. Channel services involving a path of communications between two (2)
22 or more points;
 - 23 6. Data transport services involving the movement of encoded information
24 between points by means of any electronic, radio, or other medium or
25 method;

- 1 7. Caller ID services, ring tones, voice mail and other electronic messaging
- 2 services;
- 3 8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7);
- 4 and
- 5 9. Voice over Internet Protocol (VOIP);
- 6 (b) "Communications services" does not include information services~~[- cable~~
- 7 ~~service,]~~ or **multichannel video programming**~~[satellite broadcast and wireless~~
- 8 ~~cable]~~ service;
- 9 (3) "Department" means the Department of Revenue;
- 10 (4) "End user" means the person who utilized the multichannel video programming
- 11 service. In the case of an entity, "end user" means the individual who used the
- 12 service on behalf of the entity;
- 13 (5) "Engaged in business" means:
- 14 (a) Having any employee, representative, agent, salesman, canvasser, or solicitor
- 15 operating in this state, under the authority of the provider, its subsidiary, or
- 16 related entity, for the purpose of selling, delivering, taking orders, or
- 17 performing any activities that help establish or maintain a marketplace for the
- 18 provider;
- 19 (b) Maintaining, occupying, or using permanently or temporarily, directly or
- 20 indirectly, or through a subsidiary or any other related entity, agent or
- 21 representative, by whatever name called, an office, place of distribution, sales
- 22 or sample room or place, warehouse or storage place, or other place of
- 23 business;
- 24 (c) Having real or tangible personal property in this state;
- 25 (d) Providing communications service by or through a customer's facilities
- 26 located in this state;
- 27 (e) Soliciting orders from residents of this state on a continuous, regular, or

1 systematic basis in which the solicitation of the order, placement of the order
 2 by the customer or payment of the order utilizes the services of any financial
 3 institution, communications system, radio or television station, cable service,
 4 direct broadcast satellite or wireless cable service, print media, or other
 5 facility or service located in this state; or

6 (f) Soliciting orders from residents of this state on a continuous regular,
 7 systematic basis if the provider benefits from an agent or representative
 8 operating in this state under the authority of the provider to repair or service
 9 tangible personal property sold by the retailer;

10 (6) "Gross revenues" means all amounts received in money, credits, property, or other
 11 money's worth in any form, by a provider for furnishing multichannel video
 12 programming service or communications service in this state excluding amounts
 13 received from:

14 (a) Charges for Internet access as defined in 47 U.S.C. sec. 151; and

15 (b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the
 16 United States or any state or local political subdivision upon the purchase,
 17 sale, use, or other consumption of communications services or multichannel
 18 video programming services that is permitted or required to be added to the
 19 sales price of the communications service or multichannel video programming
 20 service. This exclusion does not include any amount that the provider has
 21 retained as a reimbursement for collecting and remitting the tax to the
 22 appropriate taxing jurisdiction in a timely manner;

23 (7) "In this state" means within the exterior limits of the Commonwealth of Kentucky
 24 and includes all territory within these limits owned by or ceded to the United States
 25 of America;

26 (8) "Multichannel video programming service" means programming provided by or
 27 generally considered comparable to programming provided by a television

1 **broadcast station and shall include but not be limited to:**

2 **(a)** Cable service;~~[-and]~~

3 **(b)** Satellite broadcast and wireless cable service; **and**

4 **(c)** **Internet protocol television provided through wireline facilities without**
5 **regard to delivery technology;**

6 (9) "Person" means and includes any individual, firm, corporation, joint venture,
7 association, social club, fraternal organization, general partnership, limited
8 partnership, limited liability partnership, limited liability company, nonprofit entity,
9 estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee,
10 governmental unit or agency, or any other group or combination acting as a unit;

11 (10) "Place of primary use" means the street address where the end user's use of the
12 multichannel video programming service primarily occurs;

13 (11) "Political subdivision" means a city, county, urban-county government,
14 consolidated local government, or charter county government;

15 (12) "Provider" means any person receiving gross revenues for the provision of
16 multichannel video programming service or communications service in this state;

17 (13) "Purchaser" means the person paying for multichannel video programming service;

18 (14) "Resale" means the purchase of a multichannel video programming service by a
19 provider required to collect the tax levied by KRS 136.604 for sale, or incorporation
20 into a multichannel video programming service for sale, including but not limited
21 to:

22 (a) Charges paid by multichannel video programming service providers for
23 transmission of video or other programming by another provider over
24 facilities owned or operated by the other provider; and

25 (b) Charges for use of facilities for providing or receiving multichannel video
26 programming services;

27 (15) "Retail purchase" means any purchase of a multichannel video programming service

1 for any purpose other than resale;

2 (16) "Ring tones" means digitized sound files that are downloaded onto a device and that
3 may be used to alert the customer with respect to a communication;

4 (17) "Sale" means the furnishing of a multichannel video programming service for
5 consideration;

6 (18) (a) "Sales price" means the total amount billed by or on behalf of a provider for
7 the sale of multichannel video programming services in this state valued in
8 money, whether paid in money or otherwise, without any deduction on
9 account of the following:

- 10 1. Any charge attributable to the connection, movement, change, or
- 11 termination of a multichannel video programming service; or
- 12 2. Any charge for detail billing;

13 (b) "Sales price" does not include any of the following:

- 14 1. Charges for installation, reinstallation, or maintenance of wiring or
- 15 equipment on a customer's premises;
- 16 2. Charges for the sale or rental of tangible personal property;
- 17 3. Charges for billing and collection services provided to another
- 18 multichannel video programming service provider;
- 19 4. Bad check charges;
- 20 5. Late payment charges;
- 21 6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the
- 22 United States or any state or local political subdivision, upon the
- 23 purchase, sale, use, or consumption of any multichannel video
- 24 programming service, that is permitted or required to be added to the
- 25 sales price of the multichannel video programming service; or
- 26 7. Internet access as defined in 47 U.S.C. sec. 151;

27 (19) "Satellite broadcast and wireless cable service" means point-to-point or point-to-

1 multipoint distribution services that include but are not limited to direct broadcast
 2 satellite service and multichannel multipoint distribution services, with
 3 programming or voice transmitted or broadcast by satellite, microwave, or any other
 4 equipment directly to the purchaser. Included in this definition are basic, extended,
 5 and premium service, pay-per-view service, digital or other music services, two (2)
 6 way service, and other similar services;

7 (20) "School district" means a school district as defined in KRS 160.010 and 160.020;
 8 and

9 (21) "Special district" means a special district as defined in KRS 65.005(1)(a) that
 10 currently levies on any provider or its customers the public service corporation
 11 property tax under KRS 136.120.

12 ➔Section 2. KRS 160.603 is amended to read as follows:

13 No school district board of education shall levy any of the school taxes authorized by
 14 KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648, except the levy
 15 required by KRS 160.614(3) and (6), until after compliance with the following:

16 (1) The school district board of education desiring to levy any one (1) of these taxes
 17 shall give notice of any proposed levy of one (1) of the school taxes.
 18 Notwithstanding any statutory provisions to the contrary, notice shall be given by
 19 causing to be published, at least one (1) time in a newspaper of general circulation
 20 published in the county or by posting at the courthouse door if there be no such
 21 newspaper, the fact that such levy is being proposed. The advertisement shall state
 22 that the district board of education will meet at a place and on a day fixed in the
 23 advertisement, not earlier than one (1) week and not later than two (2) weeks from
 24 the date of the advertisement, for the purpose of hearing comments and complaints
 25 regarding the proposed increase and explaining the reasons for such proposal.

26 (2) The school district board of education shall conduct a public hearing at the place
 27 and on the date advertised for the purpose of hearing comments and complaints

1 regarding the proposed levy and explaining the reasons for such proposal.

- 2 (3) In the event that a combined taxing district desires to levy any one (1) of these
3 taxes, the boards of education shall make a joint advertisement and hold a joint
4 hearing in the manner prescribed heretofore for an individual school district.

5 ➔Section 3. KRS 160.6131 is amended to read as follows:

6 As used in KRS 160.613 to 160.617:

7 (1) "Department" means the Department of Revenue;

8 (2) "Communications service" means the provision, transmission, conveyance, or
9 routing, for consideration, of voice, data, video, or any other information signals of
10 the purchaser's choosing to a point or between or among points specified by the
11 purchaser, by or through any electronic, radio, light, fiber optic, or similar medium
12 or method now in existence or later devised.

13 (a) "Communications service" includes but is not limited to:

- 14 1. Local and long-distance telephone services;
- 15 2. Telegraph and teletypewriter services;
- 16 3. Postpaid calling services;
- 17 4. Private communications services involving a direct channel specifically
18 dedicated to a customer's use between specific points;
- 19 5. Channel services involving a path of communications between two (2)
20 or more points;
- 21 6. Data transport services involving the movement of encoded information
22 between points by means of any electronic, radio, or other medium or
23 method;
- 24 7. Caller ID services, ring tones, voice mail, and other electronic
25 messaging services;
- 26 8. Mobile wireless telecommunications service and fixed wireless service
27 as defined in KRS 139.195; and

1 9. Voice over Internet Protocol (VOIP).

2 (b) "Communications service" does not include any of the following if the
3 charges are separately itemized on the bill provided to the purchaser:

4 1. Information services;

5 2. Internet access as defined in 47 U.S.C. sec. 151;

6 3. Installation, reinstallation, or maintenance of wiring or equipment on a
7 customer's premises. This exclusion does not apply to any charge
8 attributable to the connection, movement, change, or termination of a
9 communications service;

10 4. The sale of directory and other advertising and listing services;

11 5. Billing and collection services provided to another communications
12 service provider;

13 6. Cable service, satellite broadcast, satellite master antenna television,{
14 and} wireless cable service, including direct-to-home satellite service as
15 defined in Section 602 of the federal Telecommunications Act of 1996,
16 *and Internet protocol television provided through wireline facilities*
17 *without regard to delivery technology*;

18 7. The sale of communications service to a communications provider that
19 is buying the communications service for sale or incorporation into a
20 communications service for sale, including:

21 a. Carrier access charges, excluding user access fees;

22 b. Right of access charges;

23 c. Interconnection charges paid by the provider of mobile
24 telecommunications services or other communications providers;

25 d. Charges for the sale of unbundled network elements as defined in
26 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is
27 provided on an unbundled basis in accordance with 47 U.S.C. sec.

1 251(c)(3); and

2 e. Charges for use of facilities for providing or receiving
3 communications service;

4 8. The sale of communications services provided to the public by means of
5 a pay phone;

6 9. Prepaid calling services and prepaid wireless calling service;

7 10. Interstate telephone service, if the interstate charge is separately itemized
8 for each call; and

9 11. If the interstate calls are not itemized, the portion of telephone charges
10 identified and set out on the customer's bill as interstate as supported by
11 the provider's books and records;

12 (3) "Gross cost" means the total cost of utility services including the cost of the tangible
13 personal property and any services associated with obtaining the utility services
14 regardless from whom purchased;

15 (4) "Gross receipts" means all amounts received in money, credits, property, or other
16 money's worth in any form, as consideration for the furnishing of utility services;

17 (5) "Utility services" means the furnishing of communications services, electric power,
18 water, and natural, artificial, and mixed gas;

19 (6) "Cable service" has the same meaning as provided in KRS 136.602;

20 (7) "Satellite broadcast and wireless cable service" has the same meaning as provided in
21 KRS 136.602;~~and~~

22 (8) "Ring tones" has the same meaning as provided in KRS 136.602; and

23 (9) "Multichannel video programming service" has the same meaning as in Section
24 1 of this Act.

25 ➔Section 4. KRS 160.614 is amended to read as follows:

26 (1) A utility gross receipts license tax initially levied by a school district board of
27 education on or after July 13, 1990, shall be levied on the gross receipts derived

1 from the furnishing of cable service in addition to the gross receipts derived from
2 the furnishing of the utility services defined in KRS 160.6131.

3 (2) A utility gross receipts license tax initially levied by a school district board of
4 education prior to July 13, 1990, shall be levied on the gross receipts derived from
5 the furnishing of cable service, in addition to the gross receipts derived from the
6 furnishing of the utility services defined in KRS 160.6131, if the school district
7 board of education repeats the notice and hearing requirements of KRS 160.603, but
8 only as to the levy of the tax on the gross receipts derived from the furnishing of
9 cable service.

10 (3) A utility gross receipts license tax initially levied by a school district board of
11 education on or after July 1, 2005, shall include the gross receipts derived from the
12 furnishing of direct satellite broadcast and wireless cable service in addition to the
13 gross receipts derived from the furnishing of utility services defined in KRS
14 160.6131 and cable service.

15 (4) Any school district that has cable service included in the base of a utility gross
16 receipts tax levied prior to July 1, 2005, shall, as of July 1, 2005, include gross
17 receipts derived from the furnishing of direct satellite broadcast and wireless cable
18 service in the base of its utility gross receipts tax at the same rate as applied to cable
19 service, unless the school district board of education chooses to opt out of this
20 requirement by following the procedures set forth in subsection (5) of this section.

21 (5) Any school district board of education may elect to opt out of the base expansion
22 required by subsection (4) of this section. However, any district electing to opt out
23 of the provisions of subsection (4) of this section shall also remove from the base of
24 its utility gross receipts tax all gross receipts from the furnishing of cable service.
25 To opt out of the provisions of subsection (4) of this section, a school district board
26 of education shall, before May 1, 2005:

27 (a) Determine the amount of revenue that will be lost from removing gross

1 receipts of cable service from the base of the utility gross receipts tax, and
 2 how that revenue will be replaced; and

3 (b) Provide written notice of the intent to opt out of the base expansion required
 4 by subsection (4) of this section to the Department of Revenue, the
 5 Department of Education, all cable service providers operating in the district,
 6 and the public.

7 1. Notice to the public shall be accomplished through the publication at
 8 least one (1) time in a newspaper of general circulation in the county, or
 9 by a posting at the courthouse door if there is no such newspaper, of the
 10 fact that the district board has elected to opt out of the base expansion
 11 required by subsection (4) of this section. The notice shall include the
 12 following information:


13 a. The amount of revenue that will be lost from removing gross
 14 receipts of cable service from the base of the utility gross receipts
 15 tax and how that revenue will be replaced; and

16 b. The date, time, and location of a meeting of the board, not earlier
 17 than one (1) week or later than two (2) weeks from the date of the
 18 notice, for the purpose of hearing comments regarding the
 19 proposed action of the board, and explaining the reasons for the
 20 proposed action.

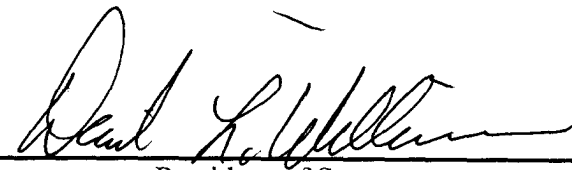
21 2. The board of education shall conduct a public hearing at the place and
 22 on the date and time provided in the notice for the purpose of hearing
 23 comments regarding the proposed action of the board, and explaining
 24 the reasons for the proposed action.

25 **(6) A utility gross receipts license tax initially levied by a school district board of**
 26 **education on or after July 1, 2009, shall include the gross receipts derived from**
 27 **the furnishing of multichannel video programming service in addition to the**

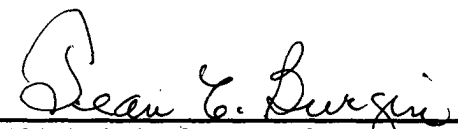
- 1 gross receipts derived from the furnishing of utility services.
- 2 (7) Any school district board of education that has cable service and direct satellite
- 3 broadcast and wireless cable service included in the base of a utility gross receipts
- 4 tax levied prior to July 1, 2009, shall, as of July 1, 2009, include gross receipts
- 5 derived from the furnishing of Internet protocol television service provided
- 6 through wireline facilities without regard to delivery technology, in the base of its
- 7 utility gross receipts tax at the same rate as applied to cable service and direct
- 8 satellite broadcast and wireless cable service.
- 9 ➔Section 5. This Act takes effect July 1, 2009.



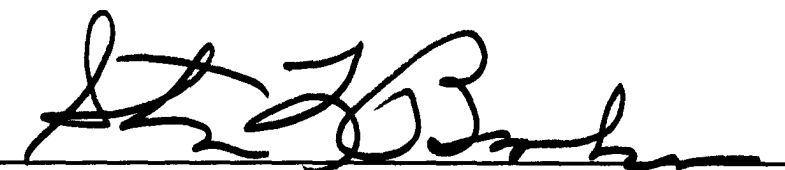
Speaker House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 25, 2009